

AN ORDINANCE

**BY COUNCILMEMBERS HOWARD SHOOK AND KWANZA HALL AS
SUBSTITUTED BY FINANCE/ EXECUTIVE COMMITTEE**

NO. 06-O-1329

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA (THE "AUTHORITY") FOR THE PURPOSE OF LEASING FROM THE AUTHORITY A MULTISTORY PARKING FACILITY CONSISTING OF APPROXIMATELY 836 PARKING SPACES TO BE CONSTRUCTED IN THE DOWNTOWN AREA OF THE CITY OF ATLANTA; AUTHORIZING ACKNOWLEDGMENT OF SERVICE AND THE FILING OF AN ANSWER ON BEHALF OF THE CITY OF ATLANTA IN VALIDATION PROCEEDINGS TO BE BROUGHT VALIDATING THE AUTHORITY'S REVENUE BONDS (DOWNTOWN PARKING DECK PROJECT), SERIES 2006 IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$24,000,000; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE APPROVAL OF THE OFFICIAL STATEMENT; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, Article IX, Section III, Paragraph 1(a), provides that:

"... any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide"; and

WHEREAS, the Downtown Development Authority of the City of Atlanta (the "Authority") was duly created and is validly existing pursuant to the provisions of Article IX, Section VI, Paragraph III of the Constitution of the State of Georgia and the Downtown Development Authorities Law of the State of Georgia (O.C.G.A. §36-42-1, *et seq.*), as amended (the "Act"); and

WHEREAS, under the Act, the Authority has, among others, the power to issue revenue bonds to finance any project, as defined in the Act; the term "project" in the Act means the acquisition, construction, installation, modification, renovation of land and interests in land,

buildings, structures, facilities or other improvements located or to be located within the downtown development area for the essential public purpose of the development of trade, commerce, industry and employment opportunities in the downtown development area and includes the acquisition, construction, installation and equipping of parking facilities; and

WHEREAS, Article IX, Section II, Paragraph III of the Constitution of the State of Georgia authorizes the City of Atlanta, Georgia (the "City") to exercise its power to provide parking facilities, and provisions of the Revenue Bond Law (O.C.G.A. Section 36-82-62(a)), grant to the City the power to operate and maintain public parking areas and public parking buildings; and

WHEREAS, the Authority has authorized the issuance of its revenue bonds to be designated the "Downtown Development Authority of the City of Atlanta Revenue Bonds (Downtown Parking Deck), Series 2006" (the "Bonds") in the aggregate principal amount of not to exceed \$24,000,000 for the purpose of acquiring, constructing, installing and equipping a multi-story parking facility consisting of approximately 836 parking spaces (the "Project"); and

WHEREAS, for and in consideration of the Authority's issuance of the Bonds and causing the installation and construction of the Project, the City will lease from the Authority the Project, pursuant to a Lease Agreement, to be dated as of July 1, 2006 (the "Agreement"); and

WHEREAS, in accordance with the Agreement, the City will make payments of "Basic Rent" in an amount equal to the principal and interest on the Bonds and "Additional Rent" to cover certain fees and charges to, among others, the Trustee and Bond Registrar; provided that the amount of the annual payments of Basic Rent shall not exceed \$1,655,000, to the Authority; and

WHEREAS, the Agreement will provide for the payment by the City to the Revenue Fund established by the Trust Indenture, dated as of July 1, 2006 (the "Indenture"), between the Authority and Regions Bank, as trustee (the "Trustee"), for the account of the Authority, of the amounts provided in the Agreement sufficient to pay debt service on the Bonds; and

WHEREAS, in order to comply with Rule 15c2-12 promulgated by the Securities and Exchange Act of 1934 (the "Rule"), the City will enter into a Continuing Disclosure Agreement, dated as of July 1, 2006 (the "Continuing Disclosure Agreement"), among the Authority, the City and Digital Assurance Certificate, L.L.C., as the dissemination agent; and

WHEREAS, the City will enter into a Bond Purchase Agreement among the Underwriter, the Authority and the City in connection with the sale of the Bonds; and

WHEREAS, the Authority has authorized the preparation of a Preliminary Official Statement and a Final Official Statement setting forth the terms of the Bonds and the security therefor, including financial and other information about the City; and it is necessary for the City to compile and furnish information to the Authority and to the Underwriter of the Bonds for such disclosure and for an appropriate official of the City to certify as to the accuracy of the information contained in the Preliminary Official Statement and the Final Official Statement; and

NOW, THEREFORE, be it resolved by the City Council of the City of Atlanta, Georgia, in public meeting properly and lawfully called and assembled, it is hereby resolved by authority of the same, that the actions described in this ordinance to be taken by or on behalf of the City shall be taken, and it is further resolved as follows:

Section 1. Execution of Agreement. The Agreement, in substantially the form attached hereto as Exhibit "A", is hereby approved by the City, and by this reference, the Agreement is made a part hereof, and the execution, delivery and performance of the Agreement is hereby authorized, provided that the sum of the annual payments of Basic Rent set forth in Exhibit C to the Lease Agreement shall not exceed \$1,655,000 in any year. Provided that Maximum Annual Basic Rent is within the parameters provided for in this Ordinance, the Mayor is authorized to execute this Agreement on behalf of the City and the City Clerk shall attest and impress the seal thereon. The official executing the Agreement on behalf of the City may agree to such changes, alterations or corrections to the Agreement as may be necessary to effect the purposes thereof, and the execution of the Agreement by such official shall constitute approval of such alterations, changes or corrections.

Section 2. Execution of Continuing Disclosure Agreement. The Continuing Disclosure Agreement, in substantially the form attached hereto as Exhibit "B", is hereby approved by the City, and by this reference, the Continuing Disclosure Agreement is made a part hereof, and the execution of the Continuing Disclosure Agreement is hereby authorized. The Continuing Disclosure Agreement shall be executed on behalf of the City by the Mayor and the seal thereof impressed thereon and attested by the City Clerk. The official executing the Continuing Disclosure Agreement on behalf of the City may agree to such changes, alterations or corrections to the Continuing Disclosure Agreement as may be necessary to effect the purposes thereof, and the execution of the Continuing Disclosure Agreement by such official shall constitute approval of such alterations, changes and corrections.

Section 3. Official Statement. The City and its staff is authorized and directed to assist the Authority and the Underwriter in the preparation of a Preliminary Official Statement, a form of which is attached hereto as Exhibit "C" and Final Official Statement (the "Official Statement"). The Mayor is authorized to execute the Official Statement on behalf of the City and to certify as to information about the City contained in the Official Statement, whether such information contains any untrue statement of a material act or omits to state any material fact necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading.

Section 4. Bond Purchase Agreement. The Bond Purchase Agreement shall be executed on behalf of the City by the Mayor, in substantially the same form attached hereto as Exhibit "D", with such changes, alterations, corrections and final exhibits thereto as may be approved by the Mayor, and the execution by such officer of the Bond Purchase Agreement shall be conclusive evidence of such approval; provided, however that the final terms and conditions contained in the Bond Purchase Agreement shall be within the parameters set forth herein.

Section 5. Actions of the Mayor and Chief Financial Officer. The Mayor and Chief Financial Officer and other appropriate officials of the City are authorized to certify any

documents and execute any receipts or other closing papers necessary to effect the purposes of the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Indenture, and the Agreement.

Section 6. Validation. The Mayor or Chief Financial Officer is hereby authorized to acknowledge service on behalf of the City of the validation petition to be filed by the District Attorney for the Atlanta Judicial Circuit seeking the validation of the Bonds and to verify the allegations contained in an answer to be prepared by the City Attorney seeking the validation of the Bonds and the security to be provided therefor.

Section 7. Annual Tax Levy. The obligation of the City to make the payments provided for pursuant to the terms of the Agreement shall constitute a general obligation of the City and a pledge of the full faith and credit of the City to provide the funds required to fulfill such obligation. The City is hereby authorized to and shall levy on all property, including real property, within the City, subject to taxation for such purpose, an ad valorem tax unlimited as to rate or amount or otherwise in order to meet its payment obligations in connection with the Agreement; provided that the City's duty to levy such tax shall abate to the extent that its revenues from other sources are used to make such payments provided for under the Agreement.

Section 8. Ordinance Constitutes Contract. The provisions, terms and conditions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds, and, upon the execution and delivery of the Agreement, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights and interest of the owners of the Bonds, nor shall the City adopt any ordinance in any way ever adversely affecting the rights of such owners; provided, however, that the City may adopt such ordinance or resolutions supplemental hereto, as shall not be inconsistent with the terms and provisions hereof, to (i) correct any ambiguity or formal defect or omission or inconsistent provisions in this ordinance, or (ii) to grant to or confer upon the owners of the Bonds any additional rights, remedies, power or authority that may be lawfully granted to or conferred upon such owners.

Section 9. Partial invalidity. In case any one or more of the provisions of this Ordinance shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, such illegality or invalidity shall not affect any other provisions hereof unless expressly so held, but this ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein, and this ordinance shall be construed to adopt, but not to enlarge upon, all applicable provisions of Georgia law, and, if any provisions hereof conflict with any applicable provision of such law, the latter as adopted by the legislature and as interpreted by the courts of this state shall prevail and shall be substituted for any provision hereof in conflict or not in harmony therewith.

Section 10. Repealer. Any and all ordinances or parts of ordinances in conflict with this ordinance shall be and the same hereby are repealed, and this ordinance shall be in full force and effect from and after its adoption.

Section 11. Effective Date. This ordinance shall be in full force and effect immediately upon its adoption.

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

PULL ORIGINAL

FOR COPY OR TO VIEW